

# ANALYSIS OF AMENDED BILL

## Franchise Tax Board

Author: Polanco Analyst: Jeani Brent Bill Number: SB 2021  
Related Bills: See Legislative History Telephone: 845-3410 Amended Date: 03/30/2000  
Attorney: Patrick Kusiak Sponsor: State Controller

**SUBJECT:** Employer and Employee Alternative Work Schedule Credits

### SUMMARY OF BILL

Under the Personal Income Tax Law (PITL) and the Bank and Corporation Tax Law (B&CTL), this bill would allow a qualified taxpayer a credit of \$500 for each qualified employee placed on an alternate work schedule on or after January 1, 2001.

Under the PITL, this bill would allow each qualified employee placed on an alternative work schedule on or after January 1, 2001, a credit of \$500.

### EFFECTIVE DATE

As a tax levy, this bill would become effective immediately upon enactment and would apply to taxable or income years beginning on or after January 1, 2001, and before January 1, 2006.

### LEGISLATIVE HISTORY

AB 2765 (2000), as introduced, would have allowed a credit equal to 50% of the amount of wages paid to an employee who starts or stops work at times other than the peak commute hours, as defined. The bill was amended to remove these credit provisions.

AB 1623 and AB 1747 (1997/1998), and AB 736, AB 2378, and AB 2592 (1995/1996) would have allowed employers credits for employees placed on telecommuting schedules. AB 1623, AB 736 and AB 2378 failed to pass out of the first house by January 31 of the second year of the session. AB 1747 was amended to remove these credit provisions. AB 2592 failed passage in Senate Revenue and Taxation Committee.

### SPECIFIC FINDINGS

**Existing state and federal laws** provide various tax credits that are designed to provide tax relief for taxpayers who must incur certain expenses (e.g., renter's credit) or to influence behavior, including business practices and decisions (e.g., research credits).

**This bill** would allow a qualified taxpayer a credit equal to \$500 for each employee placed on an alternative work schedule on or after January 1, 2001. This credit is referred to as the "employer credit" throughout this analysis.

#### Board Position:

<u>      </u> S	<u>      </u> NA	<u>      </u> NP
<u>      </u> SA	<u>      </u> O	<u>      </u> NAR
<u>      </u> N	<u>      </u> OUA	<u>      </u> X PENDING

#### Department Director

#### Date

Gerald H. Goldberg

4/26/00

**Under this bill**, the employer credit would define "qualified taxpayer" as any employer that: (1) conducts a trade or business located in California Department of Transportation (Caltrans) District 4, 7, or 12, and (2) has developed an alternative work schedule plan, as defined. See Attachment A for a listing of counties in the specified Caltrans districts.

The employer credit would define other terms, including "congestion management program," "qualified employee," "alternative work schedule," "alternative work week schedule," "flexible work shifts," "nontraditional work week," "principal place of abode" and "telecommuting."

The employer credit would specify a formula to determine the number of employees placed on an alternative work schedule during the taxable or income year.

The employer credit would require the taxpayer to obtain verification and provide it to the department upon request.

**This bill** also would allow each qualified employee placed on an alternative work schedule on or after January 1, 2001, a credit of \$500. This credit is referred to as the "employee credit" throughout this analysis.

The employee credit would define "qualified taxpayer" as any employee who: (1) is a qualified employee as described under the employer credit, (2) is not an employee of federal, state, or local government, and (3) was placed on an alternative work schedule during the qualified taxpayer's taxable or income year.

**Under this bill**, both the employer and employee credits could be carried over for up to eight years.

#### Policy Considerations

This bill raises the following policy considerations. The attached amendments would resolve these concerns pursuant to discussions with the sponsor's staff.

1. For qualified employees placed on a telecommuting alternative work schedule, the bill would allow the full amount of credit even if the employee telecommutes only one day per week. The attached amendments would prorate the credit amount based on the number of hours in the week the employee telecommutes out of an assumed 40-hour workweek.
2. The bill would allow a credit for qualified employees placed on alternative work schedules for any length of time during the year. Also, the bill would allow the credit for part-time employees placed on an alternative work schedule. The attached amendments would include in the definition of "qualified employee" a requirement that the employee be employed by the taxpayer on an alternative work schedule for the equivalent of more than six months (defined as more than 1,000 hours) during the taxable or income year.

### Implementation Considerations

This bill would allow a credit to any qualified employee placed on an alternative work schedule during the credit period, regardless of whether the employer were allowed a credit. The attached amendments would tie the allowance and amount of employee credit to the employer credit. The amendments also would require the employer to provide the employee with a certificate and to provide an annual listing to the department of all employees for whom the employer claimed a credit.

If this bill were amended to resolve this implementation consideration, implementing this bill would be accomplished during the normal annual update.

### Technical Consideration

The employee credit refers to the term "alternative work schedule," which is defined under the employer credit but not the employee credit. The attached amendments would cross-reference the definition under the employer credit for this phrase.

## FISCAL IMPACT

### Departmental Costs

If the bill is amended to resolve the implementation consideration addressed in this analysis, the department's costs are expected to be minor.

### Tax Revenue Estimate

Based on the data and assumptions discussed below, revenue losses are estimated as follows:

Estimated Revenue Impact of SB 2021 Enactment Assumed After June 30, 2000 (In <b>Millions</b> )			
	2000-1	2001-2	2002-3
Employee	Minor loss	\$-42	\$-80
Employer	Minor loss	\$-50	\$-80
Total	Minor loss	\$-92	\$-160

This analysis does not consider the possible changes in employment, personal income, or gross state product that could result from this measure.

### Revenue Discussion

This estimate is based on the Franchise Tax Board's proposed amendments to SB 2021 as amended March 30, 2000. These amendments would require qualified employees to be employed on an alternative work schedule for the equivalent of more than six months and a proration of the \$500 credit for telecommuters based on the number of hours per week the employee telecommutes.

Information sources used in determining the revenue estimate include the International Telework Association and Council (ITAC); Congressional testimony of the director of the Center for Human Resources Management, National Academy of Public Administration; House Education and the Workforce Oversight and Investigations, Telecommuting and Workplace Policy; Federal Transit Administration - U.S. Department of Transportation; Bureau of Labor Statistics; and the Bureau of the Census.

This estimate reflects employees and employers of trade or businesses located in Caltrans Districts 4, 7, or 12.

For purposes of computing the employee credit, taxable California employees for each specified Caltrans district were identified for a total of 5.2 million employees. The number of ineligible taxable employees working for government, exempt organizations, and insurance companies were extracted from the computation of qualified employees, leaving a total of 4 million employees. Based on the information from the sources listed above, 35%, or 1.4 million, of these employees were determined to already be on alternative work schedule or telecommuting schedules. A growth rate of 27.5% was applied to these existing alternative work schedule or telecommuting employees. The growth rate consists of documented growth rates for telecommuting and alternative work schedule and a 2.5% incentive effect. Thus, the projected number of new qualified alternative work schedule or telecommuting employees for 2001 is 389,000.

It was projected that 50% of the 389,000 employees would meet the requirement for more than six months of aggregate alternative work schedule or telecommute. The number of telecommuters is projected to be 12.5% or 88,000 telecommuting an average of two days per week. The \$500 credit was allocated to these employees based on the hours telecommuted per employee for a total 2001 credit generated of \$15 million. The remaining employees would be on an alternative work schedule and were broken down into part-time and full-time positions. Of these alternative work schedule employees, 19% or 16,000 were projected to be part-time employees, working an average of 22 hours per week. The remaining 86,000 alternative work schedule employees are projected to be full-time. The computed full-time-equivalent alternative work schedule employees were calculated to be 94,000 at a credit of \$500 each, for a total 2001 generated credit of \$47 million.

A one-time-only addition was added to the first-year employee credit to allow for the lack of relevant prior year data for many employers. This addition was projected to be 5% of the 1.4 million alternative work schedule or telecommuting employees at \$500 per credit, for a total addition of \$35 million.

The usage rate for the telecommuter employees was projected to be 90% for 2001 for a total of \$13 million. The 90% usage rate was used based on the size of the computed credit per employee and the demographics associated with telecommuting employees. The usage rate for alternative work schedule employees and first-year additional credits was projected to be 75%, for a total of \$63 million. **The total applied 2001-liability year employee credit was projected to be \$76 million.**

The employer portion of the credit was computed in the same manner as described above, but the base number of employees was increased to 7 million to account for employees without a tax liability who were not included in the employee credit computation, but who would be eligible to generate a credit for the qualified employer. It was projected that 1.8 million employees are on alternative work schedule or telecommuting and that 500,000 new alternative work schedule or telecommuting positions would occur in 2001, based on a growth rate of 27.5% as detailed previously. The projected 2001 employer telecommute credit is projected to be \$19 million. The alternative work schedule full-time-equivalent employees were projected to be 121,000 for a generated 2001 employer alternative work schedule credit of \$61 million. The additional 5% first-year impact amounted to \$46 million. Thus, the total employer credit generated in 2001 was projected to be \$125 million, and a usage rate of 67% was assumed. **The total applied 2001 liability year employer credit of \$84 million.**

The total employee and employer liability year credit generated in income/taxable years beginning in 2001 is projected to be \$222 million. The amount of this credit applied in 2001 is projected to be \$163 million.

The fiscal year, cash-flow estimates above, allow for delays in making necessary calculations by eligible employers and dissemination of information to eligible employees.

#### BOARD POSITION

Pending.

SB 2021  
As Amended March 30, 2000  
Attachment A

Caltrans District	Counties
4	Alameda Contra Costa Marin Napa San Francisco San Mateo Santa Clara Solano Sonoma
7	Los Angeles Ventura
12	Orange

Analyst                    Jeani Brent  
Telephone #               845-3410  
Attorney                   Patrick Kusiak

FRANCHISE TAX BOARD'S  
PROPOSED AMENDMENTS TO SB 2021  
As Amended March 30, 2000

AMENDMENT 1

@@@@ Leg. Counsel: Please modify Sections 2, 3, and 4 of the bill as follows:

SEC. 2. Section 17052.1 is added to the Revenue and Taxation Code, to read:

17052.1. (a) ~~For taxable years beginning on or after January 1, 2001, and before January 1, 2006, there~~ There shall be allowed as a credit to a qualified taxpayer against the "net tax," as defined by Section 17039, ~~five hundred dollars (\$500)~~ an amount equal to the sum of the qualified amounts for each qualified employee placed on an alternative work schedule during the taxable year on or after January 1, 2001, and before January 1, 2006.

(b) For purposes of this section:

(1) (A) "Qualified amount" means whichever of the following is applicable:

(i) In the case of a qualified employee placed on an alternative work schedule other than telecommuting, five hundred dollars (\$500).

(ii) In the case of a qualified employee placed on a telecommuting alternative work schedule, five hundred dollars (\$500) multiplied by a fraction, not to exceed one, the numerator of which is the average number of hours per week for which the qualified employee performs services that are a part of the qualified employee's normal workweek, as defined by subdivision (b) of Section 500 of the Labor Code, in the employee's principal place of abode, and the denominator of which is 40.

(2) "Qualified taxpayer" means any employer that meets both the following requirements:

(A) Conducts a trade or business located in California Department of Transportation District 4, 7, or 12, for which a congestion management program has been developed .

(B) Has developed an alternative work schedule plan.

~~(2)~~

(3) "Congestion management program" means a program developed and adopted pursuant to Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 of the Government Code.

~~(3)~~

(4) "Qualified employee" means an individual who meets all of the following criteria:

(A) At least 90 percent of whose services for the qualified taxpayer during the taxable year are directly related to the conduct of the qualified taxpayer's trade or business specified in subparagraph (A) of paragraph ~~(1)~~ (2) of subdivision (b).

(B) Is employed by the qualified taxpayer on an alternative work schedule for the equivalent of more than six months (defined as more than 1000 paid hours) during the qualified taxpayer's taxable year.

(C) Whose principal place of ~~residence~~ abode, when placed on an alternative work schedule, is at least nine miles from the qualified taxpayer's trade or business specified in subparagraph (A) of paragraph ~~(1)~~ (2) of subdivision (b).

~~(C)~~

(D) Is not a self-employed individual within the meaning of Section 401(c)(1) of the Internal Revenue Code.

~~(4)~~

(5) "Alternative work schedule" means telecommuting, flexible work shifts, an alternate workweek schedule, or a nontraditional workweek.

~~(5)~~

(6) "Alternate work week schedule" means a workweek schedule described in subdivision (c) of Section 500 of the Labor Code.

~~(6)~~

(7) "Flexible work shifts" means work shifts that begin at times other than between 6:30 a.m. and 8:30 a.m., and that end at times other than between 4:00 p.m. and 6:00 p.m.

~~(7)~~

(8) "Nontraditional work week" means a workweek, as defined by subdivision (b) of Section 500 of the Labor Code, during which the employee's day's rest, as provided by Section 551 of the Labor Code, occurs on a day other than Saturday or Sunday.

~~(8)~~

(9) "Principal place of abode" has the meaning provided in Section 2(b) of the Internal Revenue Code.

~~(9)~~

(10) "Regional agency" has the meaning provided in Section 65088.1 of the Government Code.

~~(10)~~

(11) "Telecommuting" has the meaning provided in Section 14200 of the Government Code.

~~(11)~~

(12) California Department of Transportation Districts 4, 7, and 12 comprise the following counties:

(A) District 4: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

(B) District 7: Los Angeles and Ventura Counties.

(C) District 12: Orange County.

(c) (1) The number of qualified employees placed on alternative work schedules during the taxable year shall be determined by subtracting the total number of employees employed by the taxpayer on alternative work schedules during the immediately preceding taxable year, from the number of employees employed by the taxpayer on alternative work schedules during the taxable year in which the credit is allowed.

(2) The total number of employees employed by the taxpayer on alternative work schedules shall be equal to the sum of both the following:



(A) The total number of hours worked for the qualified taxpayer by employees on alternative work schedules (not to exceed 2,000 for each qualified employee) who are paid an hourly wage divided by 2,000.

(B) The total number of months worked for the qualified taxpayer by employees on new alternative work schedules who are salaried employees divided by 12.

(3) The number of employees determined pursuant to paragraph (2) shall be rounded down to the nearest whole number.

(d) The qualified taxpayer shall do ~~both~~ all of the following:

(1) Obtain from a regional agency written verification that the taxpayer's trade or business specified in subparagraph (A) of paragraph (1) of subdivision (b) is located within California Department of Transportation District 4, 7, or 12, for which a congestion management program has been adopted.

(2) Retain a copy of the written verification and provide it upon request to the Franchise Tax Board.

(3) Provide a written certificate to each qualified employee verifying that the qualified taxpayer is allowed a credit under this section, and the amount of that credit.

(4) Provide an annual listing to the Franchise Tax Board (in the form or manner specified by the Franchise Tax Board) of the qualified employees for whom the qualified taxpayer claimed a credit under this section.

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" for the next eight taxable years, or until the credit has been exhausted, whichever occurs first.

(f) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

SEC. 3. Section 17052.2 is added to the Revenue and Taxation Code, to read:

17052.2. (a) ~~For taxable years beginning on or after January 1, 2001, and before January 1, 2006, a~~ A taxpayer who is a qualified taxpayer employee shall be allowed a credit against the "net tax," as defined by Section 17039, equal to five hundred dollars (\$500) an amount equal to the amount allowed as a credit to a qualified taxpayer under paragraph (1) of subdivision (b) of Section 17052.1 or 23601 for that qualified employee, not to exceed five hundred dollars (\$500).

(b) For purposes of this section, "qualified ~~taxpayer~~ employee" means a taxpayer who satisfies all of the following:

(1) Is a "qualified employee" described in paragraph ~~(3)~~ (4) of subdivision (b) of Section 17052.1 or 23601 for which a credit is allowed to a "qualified taxpayer," as defined by paragraph (2) of subdivision (b) of Section 17052.1 or 23601.

(2) Is not an employee of the federal government or of this state or of any political subdivision of this state.

(3) Was placed on an alternative work schedule, as defined in paragraph (4) of subdivision (b) of Section 17052.1 or 23601, during the qualified taxpayer's taxable or income year in which the qualified taxpayer claimed a credit under Section 17052.1 or 23601.

(c) The taxpayer shall do both of the following:

(1) Obtain a written certificate from the qualified taxpayer, as defined by paragraph (2) of subdivision (b) of Section 17052.1 or 23601, verifying that

the qualified taxpayer is allowed a credit under Section 17052.1 or 23601 with respect to that qualified employee during the qualified taxpayer's taxable or income year, and the amount of that credit.

(2) Retain a copy of the written certificate and provide it upon request to the Franchise Tax Board.

(d) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" for the next eight taxable years, or until the credit has been exhausted, whichever occurs first.

~~(d)~~

(e) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

SEC. 4. Section 23601 is added to the Revenue and Taxation Code, to read:  
23601. (a) ~~For taxable years beginning on or after January 1, 2001, and before January 1, 2006, there~~ There shall be allowed as a credit to a qualified taxpayer against the "tax," as defined by Section 23036, ~~five hundred dollars (\$500)~~ an amount equal to the sum of the qualified amounts for each qualified employee placed on an alternative work schedule during the income year on or after January 1, 2001, and before January 1, 2006.

(b) For purposes of this section:

(1) (A) "Qualified amount" means whichever of the following is applicable:

(i) In the case of a qualified employee placed on an alternative work schedule other than telecommuting, five hundred dollars (\$500).

(ii) In the case of a qualified employee placed on a telecommuting alternative work schedule, five hundred dollars (\$500) multiplied by a fraction, not to exceed one, the numerator of which is the average number of hours per week for which the qualified employee performs services that are a part of the qualified employee's normal workweek, as defined by subdivision (b) of Section 500 of the Labor Code, in the employee's principal place of abode, and the denominator of which is 40.

(2) "Qualified taxpayer" means any employer that meets both the following requirements:

(A) Conducts a trade or business

located in California Department of Transportation District 4, 7, or 12, for which a congestion management program has been developed .

(B) Has developed an alternative work schedule plan.

~~(2)~~

(3) "Congestion management program" means a program developed and adopted pursuant to Chapter 2.6 (commencing with Section 65088) of Division 1 of Title 7 of the Government Code.

~~(3)~~

(4) "Qualified employee" means an individual who meets all of the following criteria:

(A) At least 90 percent of whose services for the qualified taxpayer during the income year are directly related to the conduct of the qualified taxpayer's trade or business specified in subparagraph (A) of paragraph ~~(1)~~ (2) of subdivision (b).

(B) Is employed by the qualified taxpayer on an alternative work schedule for the equivalent of more than six months (defined as more than 1000 paid hours) during the qualified taxpayer's income year.

(C) Whose principal place of ~~residence~~ abode, when placed on an alternative work schedule, is at least nine miles from the qualified taxpayer's trade or business specified in subparagraph (A) of paragraph ~~(1)~~ (2) of subdivision (b).

~~(C)~~

(D) Is not a self-employed individual within the meaning of Section 401(c)(1) of the Internal Revenue Code.

~~(4)~~

(5) "Alternative work schedule" means telecommuting, flexible work shifts, an alternate workweek schedule, or a nontraditional workweek.

~~(5)~~

(6) "Alternate work week schedule" means a workweek schedule described in subdivision (c) of Section 500 of the Labor Code.

~~(6)~~

(7) "Flexible work shifts" means work shifts that begin at times other than between 6:30 a.m. and 8:30 a.m., and that end at times other than between 4:00 p.m. and 6:00 p.m.

~~(7)~~

(8) "Nontraditional work week" means a workweek, as defined by subdivision (b) of Section 500 of the Labor Code, during which the employee's day's rest, as provided by Section 551 of the Labor Code, occurs on a day other than Saturday or Sunday.

~~(8)~~

(9) "Principal place of abode" has the meaning provided in Section 2(b) of the Internal Revenue Code.

~~(9)~~

(10) "Regional agency" has the meaning provided in Section 65088.1 of the Government Code.

~~(10)~~

(11) "Telecommuting" has the meaning provided in Section 14200 of the Government Code.

~~(11)~~

(12) California Department of Transportation Districts 4, 7, and 12 comprise the following counties:

(A) District 4: Alameda, Contra Costa, Marin, Napa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma Counties.

(B) District 7: Los Angeles and Ventura Counties.

(C) District 12: Orange County.

(c) (1) The number of qualified employees placed on alternative work schedules during the income year shall be determined by subtracting the total number of employees employed by the taxpayer on alternative work schedules during the immediately preceding income year, from the number of employees employed by the taxpayer on alternative work schedules during the income year in which the credit is allowed.

(2) The total number of employees employed by the taxpayer on alternative work schedules shall be equal to the sum of both the following:

(A) The total number of hours worked for the qualified taxpayer by employees on alternative work schedules (not to exceed 2,000 for each qualified employee) who are paid an hourly wage divided by 2,000.

(B) The total number of months worked for the qualified taxpayer by employees on new alternative work schedules who are salaried employees divided by 12.

(3) The number of employees determined pursuant to paragraph (2) shall be rounded down to the nearest whole number.

(d) The qualified taxpayer shall do both of the following:

(1) Obtain from a regional agency written verification that the taxpayer's trade or business specified in subparagraph (A) of paragraph (1) of subdivision (b) is located within California Department of Transportation District 4, 7, or 12, for which a congestion management program has been adopted.

(2) Retain a copy of the written verification and provide it upon request to the Franchise Tax Board.

(3) Provide a written certificate to each qualified employee verifying that the qualified taxpayer is allowed a credit under this section, and the amount of that credit.

(4) Provide an annual listing to the Franchise Tax Board (in the form or manner specified by the Franchise Tax Board) of the qualified employees for whom the qualified taxpayer claimed a credit under this section.

(e) In the case where the credit allowed by this section exceeds the "net tax," the excess may be carried over to reduce the "net tax" for the next eight taxable years, or until the credit has been exhausted, whichever occurs first.

(f) This section shall remain in effect only until December 1, 2006, and as of that date is repealed.

